

RICHARD M. WARR,	: Order Affirming Decision
Appellant	:
	:
v.	:
	: Docket No. IBIA 96-24-A
PORTLAND AREA DIRECTOR,	:
BUREAU OF INDIAN AFFAIRS,	:
Appellee	: January 13, 1997

This is an appeal from an October 24, 1995, decision of the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), cancelling Yakama Lease No. 1-1-7634-9296 (the lease) for nonpayment of past due rent. For the reasons discussed below, the Board affirms the Area Director's decision.

The lease, under which appellant was lessee, was a farming lease covering two Yakama allotments, both of which are owned almost entirely by the confederated Tribes and Bands of the Yakama Indian Nation (Tribe). 1/ The lease was approved by the Superintendent, Yakima Agency, BIA, on May 26, 1992, for a term of 5 years beginning January 1, 1992, and ending December 31, 1996.

Because the lease has now expired, this appeal is technically moot. Under other circumstances, the Board might dismiss the appeal on that basis. However, because appellant indicates that he has other, possibly related, proceedings pending--in particular, a tort claim against the Wapato Irrigation District--the Board will render a decision in this appeal so that he will have a final Departmental decision on the matter at issue here.

The lease has had a troubled history. Appellant's first rental payment was due upon approval of the lease, i.e., May 26, 1992, and his second on December 1, 1992. These payments were to cover the lease years 1992 and 1993. On January 13, 1993, when appellant had not made either payment, the Superintendent, citing 25 CFR 162.14, 2/ ordered appellant to show why his

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1/ The record shows that the Tribe holds an approximately 89 percent interest in each allotment and that the remaining interests are held by individual Indians.

2/ 25 CFR 162.14 provides:

"Upon a showing satisfactory to the Secretary that there has been a violation of the lease or the regulations in this part, the lessee shall be served with written notice setting forth in detail the nature of the alleged violation and allowing him ten days from the date of receipt of notice in which to show cause why the lease should not be cancelled. \* \* \* If within

lease should not be cancelled for nonpayment of rent. On January 29, 1993, the Superintendent cancelled the lease. Appellant appealed the cancellation to the Area Director. On March 31, 1993, the Area Director set aside the cancellation and gave appellant a further opportunity to pay the delinquent rent. Appellant made the required payments.

Appellant then failed to make timely payment of his rent for 1994 and 1995. By letters of April 6, 1995, and May 9, 1995, the Superintendent again ordered him to show why his lease should not be cancelled. Appellant responded by submitting a proposal that he be given until ten days after the end of the last harvest to make all lease payments owing. Appellant's proposal was submitted to the Tribe, which rejected it and requested that BIA proceed with the lease cancellation.

On June 27, 1995, the Superintendent cancelled the lease. Appellant appealed to the Area Director who affirmed the cancellation on October 24, 1995. Appellant then appealed to the Board.

Appellant has made numerous filings with the Board, many of which the Board does not consider because, despite repeated admonitions, appellant failed to certify that he had served them on the other parties.

Appellant also made a belated filing, this time including a certificate of service, long after briefing was completed. In that filing, appellant requested that his rent for 1994 and 1995 be lowered, that his 1996 rent be waived, and that his lease be extended until November 30, 1997. Under 43 CFR 4.311(b), no briefs other than the ones specified in the Board's regulations are allowed except by permission of the Board. Even if it were to consider this belated filing, the Board would simply find that appellant's requests are, in effect, requests for lease modifications which must be addressed to the Indian lessors.

Insofar as his arguments are relevant to the issue on appeal here, appellant's principal contention is that he should be excused from paying his rent, either in whole or in part, because he did not receive enough water from the Wapato Irrigation Project to produce a successful crop.

As the Area Director points out, however, nothing in appellant's lease made payment of rent contingent upon his receipt of water. Appellant had an obligation under his lease to pay rent and failed to do so. His proposal to

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fn. 2 (continued)

the ten-day period, it is determined that the breach may be corrected and the lessee agrees to take the necessary corrective measures, he will be given an opportunity to carry out such measures and shall be given a reasonable time within which to take corrective action to cure the breach."

3/ Although appellant contends that the non-delivery of water was the fault of the Irrigation Project, or otherwise beyond appellant's control, the record indicates that at least part of the problem was his failure to pay his operation and maintenance assessments.

delay payment of his rent was a proposal for modification of his lease. The Tribe, as principal lessor, had a right to reject the proposed modification.

Appellant also contends that it was improper for BIA to employ the cancellation procedures in 25 CFR 162.14 because his lease states that "violations of this lease shall be acted upon in accordance with the regulations in 25 CFR [Part] 131."

The regulations governing leasing of Indian lands were formerly codified at 25 CFR Part 131. That part was redesignated as Part 162 in 1982. Appellant's lease was prepared on an old printed form with an out-of-date citation to the leasing regulations. Assuming arguendo that BIA erred in failing to correct the out-of-date citation, that error did not grant appellant rights not authorized by law. E.g., Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); DuBray v. Acting Aberdeen Area Director, 30 IBIA 64 (1996), and cases cited therein. Thus, the incorrect citation did not relieve appellant of his obligation to pay rent under his lease. Nor did it preclude BIA from cancelling appellant's lease under section 162.14 when appellant violated the terms of his lease by failing to pay rent. 4/

As appellant was advised in the notice of docketing for this appeal, the burden was upon him to show error in the Area Director's decision. He has failed to do so.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's October 24, 1995, decision is affirmed. 5/

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Anita Vogt  
Administrative Judge

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Kathryn A. Lynn  
Chief Administrative Judge

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4/ As a person doing business on trust land, appellant was bound by the regulations governing his activities thereon. It was his responsibility to familiarize himself with those regulations. Id.  
5/ All arguments made by appellant but not discussed in this decision have been considered and rejected.